

REMARKS/ARGUMENTS

In the Restriction Requirement mailed February 17, 2010, the Examiner delineated the following inventions as being patentably distinct.

- Group I: Claim(s) 38-57, drawn to a method of making particles by spraying a suspension;
- Group II: Claim(s) 58-7, drawn to a method of making particles by grinding;
- Group III: Claim(s) 72-81, drawn to a method of making particles by melt processing;
- Group IV: Claim(s) 82-83, drawn to a method of making a structure; and
- Group V: Claim(s) 84-94 drawn to a molded body.

Accordingly, Applicants elect with traverse Group III (Claims 72-81) drawn to a method of making particles by melt processing.

The claims of Groups I-V are integrally linked as method of making and product made.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinction (M.P.E.P. § 803).

There is a technical relationship that links the Groups (I-V) and it is this technical relationship that defines the contribution which each of the Groups taken as a whole makes over the prior art.

The Examiner asserts that Group I-V do not relate to a single general inventive concept under PCT 13.1 and 13.2 because they lack the same corresponding technical feature. The Examiner, however, has not considered that the claims in each group are considered

related inventions under 37 C.F.R. § 1.475(b) in which the inventions are considered to have unity of invention. Applicants submit that while PCT Rule 13.1 and 13.2 are applicable 37 C.F.R. § 1.475(b) provides in relevant part that “a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to---(3) product, process, and the use of said product”.

Applicants respectfully traverse on the additional grounds that the Office has not shown that a burden exists in searching the entire application.

Further, the M.P.E.P. § 803 states as follows:

If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits even though it includes claims to distinct and independent inventions.

Applicants submit that a search of all the claims would not constitute a serious burden on the Office. In fact, the International Search Authority has searched all of the claims together. As the Office has not shown any evidence that a restriction should now be required when the International Preliminary Report did not restriction is believed to be improper.

For the reasons set forth above Applicants request that the Restriction Requirement be withdrawn.

Applicants further request that if the elected invention, Group III, is found allowable, withdrawn Groups I, II, IV and V be rejoined.

Applicants submit that the above identified application is now in condition for examination on the merits, and an early notice of such action is earnestly solicited.


Respectfully submitted,

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